cannot be maintained as the suit of the corporation: *Stewart & Palmer v. Thornton*, 75 Va. 215; *People v. Fulton*, 11 N. Y. 94.

(b) *In grants, contracts, wills, etc.* Here, if it can be satisfactorily determined by evidence *aliunde* what corporation was intended, the courts will generally give effect to the intention, regardless of the error in the name: 1 Thomp. Corp. 294–5; 1 Morawetz Corp. 354; *Culpeper Soc. v. Digges*, 6 Rand. 165 (18 Am. Dec. 708); *Trustees v. Guthrie*, 86 Va. 125.

CONFUSION OF GOODS BY MUTUAL CONSENT.—This is a frequent case when wheat of many owners is deposited in a mill or a grain-elevator, by way of bailment, with the understanding on the part of all the owners that the grain may be thrown together in a common mass. The law in such a case is that all the owners become tenants in common of the mass. Thus, in *Dale v. Olmstead*, 36 Ill. 150, a case of grain warehousemen, it is said: "The corn of all having been intermingled, according to usage with warehousemen, and without objection of the several owners, it became common property, owned by all in the proportions in which they had contributed to the common stock. This is so from the very necessity of the case, because, so soon as it is intermingled, each person's portion loses its identity, and can no longer be distinguished or separated from the common mass. Neither of the owners could point out, separate, or prove that any particular portion was his. Neither can it be shown when a portion has been lost or appropriated, whose particular corn it was. It being then in common, they are liable to sustain any loss which may occur by diminution, decay or otherwise, in the same proportion."

But, in case of such deposits, an interesting question frequently arises as to the true nature of the transaction, whether, under the circumstances, it may not amount to a *sale* of the mass of the grain to the miller or other depositary, and so throw the whole loss on him in case of accidental destruction by fire or other cause. In *Reherd v. Clem*, 86 Va. 374, the rule is thus laid down: Where the article delivered is to be returned, though in an altered form (*e. g.*, wheat after it is made into flour), the transaction is a bailment, and the title of the property is unchanged; but where another thing, of equal value, may be returned, the title passes to the receiver, and the transaction is a sale. See, in accord, *Bretz v. Diehl*, 117 Pa. St. 589 (2 Am. St. R. 706); *Barnes v. McCrea*, 75 Iowa, 267 (9 Am. St. Rep. 473). Thus, if the understanding of those who deliver wheat into a mill or elevator is that the person receiving the grain might take from it or the flour at his pleasure, and appropriate the same to his own use, on condition of procuring other wheat or flour to supply its place, the dominion over the property passes to the depositary, and the transaction is sale, not bailment. But although the wheat of many owners is, by their consent, mixed by a miller, yet if his contract is to redeliver to the owners of the mass flour made *from that mass*, in proportion to their respective interests, with no power to appropriate to himself or to sell to others either the wheat, or the flour made from it, so that all the wheat is to be returned to all the owners as flour, though no owner may get the flour made from his particular wheat, the transaction is a bailment; and if the wheat be destroyed, the loss falls not on the miller, but on the owners of the wheat. See *Slaughter v. Green*, 1 Rand. 3; 2 Schoul. P. P. sec. 46.